

9 FAM 41.86 Notes

(TL:VISA-324; 10-10-2001)

9 FAM 41.86 N1 Background

(TL:VISA-324; 10-10-2001)

The Legal Immigration Family Equity Act (LIFE Act), Pub. L. 106-553 added a new nonimmigrant category (V) to provide nonimmigrant status for second preference spouses and children of permanent residents for whom petitions were filed on or before the date of enactment (December 21, 2000) and who have been waiting for three or more years for petition approval, adjustment of status or an immigrant visa. This new category (V-1) is intended to permit long-separated families to reunite in the U.S. and await second preference adjustment of status. Because V status is available to those whose petitions were filed on or before December 21, 2000, this category effectively sunsets in three years or when the pool of eligible applicants eventually dissipates with V issuances over time.

9 FAM 41.86 N2 Grounds of Inadmissibility

(TL:VISA-324; 10-10-2001)

An alien seeking admission under INA 101(a)(15)(V) is subject to all grounds of inadmissibility under INA 212(a), except 212(a)(9)(B). Such alien is also not subject to the residence abroad requirement of INA 214(b).

9 FAM 41.86 N3 No V Visa if Priority Date is Current

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If the applicant's priority date is current, consular officers must process the applicant as an immigrant.

9 FAM 41.86 N4 Derivative Visas

(TL:VISA-324; 10-10-2001)

The unmarried child of a V-1 is entitled to derivative status if he or she can demonstrate relationship to the principal V-1. The V-2 status is not relegated to accompanying or following to join. Thus V-2 derivatives can precede the V-1 principal applicant to the United States.

9 FAM 41.86 N5 Documentary Requirements

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a. Applicants for V visas will be processed with similar documentary requirements as those for the K-1 fiancé visa. The documentary requirements are as follows:

(1) The applicant must undergo the standard IV medical examination by a panel physician;

(2) An NCIC name check must be done by NVC for each applicant;

(3) The applicant must present local police certificates, if required; and

(4) The applicant must present evidence of family relationship to the petitioner at the time of the visa interview.

b. An applicant for a V visa is subject to INA 212(a)(4). The applicant must demonstrate to the consular officer's satisfaction that he or she will not be a public charge. The consular officer may not require a Form I-864. An applicant may present a letter from the petitioner's employer or evidence that he or she will be self-supporting. Consular officers may require the Form I-134, Affidavit of Support when it is deemed useful.

9 FAM 41.86 N6 Confirming Eligibility for V Status

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NVC stores files for F2A cases that are not yet current. Therefore, NVC can confirm an applicant's eligibility for V processing for those applicants whose files are at NVC. NVC will send an information/instruction sheet to those applicants with INS-approved petitions in storage at NVC. The letter will briefly outline the documentary requirements for the V visa and instruct the applicant to contact the post. This will be the only mailing from NVC to V applicants; no Packet 3 or Packet 4 will be sent. NVC will not send an electronic file or a paper file to posts. Successful V applicants will enter the United States and remain in V status until an immigrant number is available. They will then be eligible to adjust status and INS may need to retrieve the file from NVC.

9 FAM 41.86 N7 Validity and Fees for V Visas

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There is no additional processing fee for a V application or issuance, only the standard MRV fee. There are no separate reciprocity fees. Unless constrained by security clearance requirements or other waivers which are valid for a year or less, the validity of a V1 visa will be ten months for multiple entries. V-2 applicants, however, can receive visas only valid until they reach the age of 21 years. Applicants for V-2 visas will be required to sign a form apprising them that entering into a marriage prior to obtaining adjustment of status will render them ineligible for adjust as an F2A immigrant.

9 FAM 41.86 N8 Processing Priorities

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The purpose of the LIFE Act is to reunite families. It is important that posts process these cases as quickly as possible. Posts should first handle IV cases that are current for processing and for which visa numbers are available. The second priority should be V-1 and K-3 applicants and their children.